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REPORT OF INVESTIGATION OF PHYSICAL DISABILITY RETIREMENT OF OFFICERS OF THE ARMY, NAVY, AND MARINE CORPS

CONDUCTED BY

THE LEGAL SUBCOMMITTEE
COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

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INVESTIGATION OF PHYSICAL DISABILITY RETIREMENT OF OFFICERS OF THE ARMY, NAVY, AND MARINE CORPS

SECTION I. GENERAL

The problems involved in retirement proceedings in the armed services, particularly physical disability retirements, have been under consideration by this committee for a considerable period of time. In June of 1947, the general subject of retirement was being considered by the Retirement Subcommittee of the House Armed Services Committee. It was decided that a joint study of retirement problems of the armed services be conducted by the Departments, and that a report of the findings be submitted to the committee in January of 1948. Pursuant to that decision, a committee of the Joint Army-Navy Personnel Board began a study of the subject and had completed its report by November 12. The report was under detailed consideration by the Departments, preparatory to its submission to the committee, when the case of Maj. Gen. Bennett Meyers was brought to the attention of the public. In view of the public interest and indignation, which resulted from the Meyers case, it was considered advisable to institute an immediate investigation of all officer disability retirements. The Legal Subcommittee of the House Armed Services Committee began the investigation on December 1, 1947. From December 1, 1947, until February 2, 1948, a detailed study was made of all pertinent laws and procedures governing disability retirement of officers; 2,741 questionnaires were forwarded to Army and Navy officers in the grade of colonel and captain, respectively, and above; in addition to the statistical data which was prepared by the committee, voluminous statistical data was prepared by the Army and Navy Departments and submitted to the committee. Much of this data is included in the printed hearings, but the following statistics are set out in order that there be a better understanding of the complexity of the problems involved:

During the period 1940–47—

(*a*) Approximately 19,000 officers served in the Regular officer corps of the Army, and 2,505 (13 percent) were retired for physical disability.

(*b*) Approximately 900,000 non-Regular officers served in the Army, and 26,337 (3 percent) were retired for physical disability.

(*c*) 21,990 officers served in the Regular Navy, and 1,694 (7.7 percent) were retired for physical disability.

(*d*) 355,955 non-Regular officers served in the Navy, of whom 3,722 (1 percent) were retired for physical disability.

(*e*) 6,245 officers served in the Regular Marine Corps, of whom 234 (3.7 percent) were retired for physical disability.

(*f*) 41,233 non-Regular officers served in the Marine Corps, of whom 806 (1.9 percent) were retired for physical disability.

During the year 1945, 99 Army retiring boards and 4 Navy retiring boards were in operation.

A combination of circumstances resulted in serious criticism of physical retirement procedures in the Army and the Navy, both from those who had been denied disability retirement and from the general public, which felt that there had been too much generosity in granting disability retirement. By the time public hearings were opened, on February 2, 1948, the combined criticisms from all sources were summarized as follows: (1) That inequities exist between the retirement system of the Army and that of the Navy; (2) that disability retirement has been granted in some cases as a direct result of fraud; (3) that both the Army and the Navy have been overly generous in granting disability retirement, with a resulting increased burden on the taxpayers; (4) that there has been an unlawful and calculated effort on the part of officers of the Regular Army to obtain disability retirement benefits; (5) that a definite pattern of discrimination has been practiced by the officers of the Regular Establishment against non-Regular officers, not only from the standpoint of the comparative manner in which disability retirement was granted, but also on the basis of collateral benefits which Regular officers receive and which non-Regular officers do not receive. The findings of this committee, with respect to these charges, will be specifically set out in section III of this report. Additional points which were raised during the course of the hearings will likewise be considered in section III.

A total of 12 public hearings and 8 executive sessions have been held on this subject. In addition to the witnesses who were scheduled to testify at the outset of the hearings, the committee has at all times maintained a policy of scheduling any additional witnesses who could offer constructive testimony on the subject under consideration. No witness was denied an opportunity to appear before the committee unless the substance of his testimony had been covered by previous or scheduled witnesses. It is the considered opinion of this committee that an impartial and thorough inquiry into the subject of disability retirements in the armed forces has been conducted.

Section II. Legislative History

1. Army

In August of 1861, within 2 weeks of the Battle of Bull Run, the first retirement act for Regular Army officers was enacted. Practically all field officers of the small Regular Army were at that time unfit to exercise command in the field, being of advanced age, diseased, and having infirmities. It was clear that something had to be done to remove such men so that the younger and more vigorous individuals who, in fact, exercised command could be advanced to appropriate rank. That law prescribed that "when any officer has become incapable of performing the duties of his office, he shall be either retired from active duty or wholly retired by the President." Reenacted in 1882, adding the manner of retirement, that law is still the law which authorizes retirement of Regular Army officers. The purpose of these enactments was not for the benefit of the individual, but to give the Nation a vital, fit, Regular officer corps. The standard for determination as to whether an officer should or should not retire for disability, therefore, has been "fitness for full military service."

Retirement compensation is 75 percent of pay, less allowances, and varies from approximately 47 percent of the total pay of a second lieutenant to 57 percent of the total pay of officers with over 30 years' service. The original intent of the law was to provide compensation for officers who had chosen the military service as a career. The degree in which an officer may be disabled has no relation to the amount of compensation which may be realized.

In 1862, shortly after the first retirement act was passed, the Congress enacted another act, wherein provision was made for pensions for volunteers disabled in the service. It is apparent that the original intent of the Congress was to treat disability compensation or pensions of volunteers as being different from retirement pay of the Regulars. Legislation similar to the 1862 act has been enacted during and after each war, the most elaborate being that establishing the Veterans' Administration.

In 1928, the Congress enacted the Tyson-Fitzgerald bill, which provided that non-Regular officers disabled 30 percent should be placed on the emergency officers' retired list at 75 percent of their pay. President Coolidge vetoed the bill on the basis that it discriminated against all enlisted men of World War I and all officers whose disability was less than 30 percent and that it compensated officers on the basis of rank rather than disability. The Congress overrode the veto on May 24, 1928, and the bill became law. For the first time, the system of pay set forth in the retirement law of the Regular services was used as a measurement for disability compensation. Since the number of officers involved was small, and the Veterans' Administration administered the benefits, no serious problem was created.

In 1939, a bill to increase the Air Corps, by calling 3,000 Reserve officers to extended active duty, was introduced. During House consideration of this measure, a proviso was added to cover retirement benefits for Reserve officers disabled while on active duty. Representatives of the Reserve components, the American Legion, and the Veterans of Foreign Wars favored the measure. The War Department opposed its enactment on the basis that it was inequitable to Regular officers, stating "there is not so good a case for the granting of retirement pay to officers, for example, of the grade of colonel, who, under the proviso, would be eligible, after 30 days' active service, to retirement pay on the same basis as is accorded a Regular officer who has spent approximately 30 years in active service in attaining the same grade." The act was passed on April 3, 1939, and provided that "all officers, warrant officers, and enlisted men of the Army of the United States other than officers of the Regular Army, if called or ordered into the active military service by the Federal Government for extended service in excess of 30 days, and who suffer disability or death in line of duty from disease or injury while so employed, shall be deemed to have been in the active military service during such period and shall be in all respects entitled to receive the same pensions, compensation, retirement pay and hospital benefits as are now or may hereafter be provided by law or regulation for officers and enlisted men of corresponding grades and length of service of the Regular Army." This act had no real application to enlisted men because at that time there was no physical

disability retirement law for Regular Army enlisted men. The act established a different system of compensation for temporary officers for service-connected disabilities than the one in effect for enlisted men. The criteria for physical retirement for the non-Regular officer became the same as that for the Regular officer, "fitness for military service." Realizing that the War Department would be faced with an increasingly difficult administrative problem, the President issued an Executive order in 1939, amended in 1940, which directed that all non-Regular officers who suffered a permanently incapacitating disability as an incident of service would be certified to the Veterans' Administration for the administration of all benefits provided under the act of April 3, 1939. A comparative view of the administrative problem is shown in the following summaries. In the 25 years preceding 1940, including World War I, less than 3,000 officers were retired. In the period 1940 to 1947, more than 900,000 Regular and non-Regular Army officers served on active duty, and in excess of 28,000 of these officers were retired for physical disability, or certified to Veterans' Administration for retirement compensation.

The act of April 3, 1939, produced an unforeseen inequity. By 1943, Regular, Reserve, and National Guard officers were practically all serving in temporary grades higher than their permanent rank. AUS officers had only one grade, the last one to which promoted. As a result, an AUS officer who became disabled while holding a higher temporary grade would be retired in this grade while the Regular officer who may have held the permanent grade of captain and the temporary grade of colonel had to be retired in his permanent grade of captain. To correct this obvious inequity, Public Law 101, Seventy-eighth Congress, was enacted. This act permitted retirement for physical disability in a higher temporary rank, and it was provided that retired officers called to active duty should be retired in any higher temporary rank attained by them if they suffered a new disability which was incapacitating or a 30-percent permanent aggravation of a previous disability. The enactment of this law, was applicable to all officers of all components, regular and non-Regular.

The final act which was material to this subject was the Revenue Act of 1942. Subsequent to the enactment of this act, it was held that retirement pay received because of physical disability was to be considered as a pension and, therefore, was not taxable. The War Department did not request this ruling. The officer personnel who had been retired for physical disability were merely the beneficiaries of the ruling. It should be pointed out that the officer beneficiaries of disability retirement pay of the armed services constitute a minor portion of the group who enjoy this exemption. Regardless of this fact, it has resulted in a motivation for an officer to seek retirement for physical disability, rather than for years of service, and has produced undesirable consequences which will be subsequently considered in this report.

2. Navy

The laws governing the retirement of Regular Navy officers for physical disability have remained in force, almost without change, for the past 87 years. The act of August 3, 1861, provided that whenever in the judgment of the President an officer is incapacitated to

perform the duties of his office, the President in his discretion may direct the Secretary of the Navy to refer the case to a retiring board of not more than nine and not less than five commissioned officers, two-fifths of whom shall be medical officers. The retiring boards are authorized to inquire into and determine the facts regarding the nature and occasion of the disability of any such officer, and to have the powers of a court martial and a court of inquiry, as may be necessary. It is further required that the retiring board determine whether or not an officer is incapacitated for active service, find and report the cause which, in its judgment, produced the incapacity, and whether such cause is an incident of the service. Final approval or disapproval of the proceedings and decision of the board is vested in the President.

The amount of retired pay was prescribed in various manners until the act of July 15, 1870, which stated that it would be equal to 75 percent of the sea pay of the rank held at the time of retirement. (Thus far the procedures governing the Army and the Navy are substantially the same.) In those cases where the board finds that an officer's incapacity has not resulted from an incident of the service, such officer shall, if said decision is approved by the President, be retired from active service on furlough pay or wholly retired from service with 1 year's pay, as the President may determine. Furlough pay was eventually established as being the equivalent of one-half of active-duty pay. The term "wholly retired from the service" means a complete separation and the assumption of civilian status, with none of the obligations required of those regularly retired.

Except for the provisions contained in the Temporary Promotion Act of 1941, allowing retirement for physical disability in a temporary rank, those are the laws which continue to govern the retirement of Regular Navy and Marine Corps officers for physical incapacity. The law is clear on the point that full retirement requires that the incapacity must have been caused by an incident of the service. It has been consistently held that the incapacity must be of a permanent nature so as to unquestionably disqualify the officer for duty on the active list. The decision of a retiring board, when approved by the President, that an officer is incapacitated for active service, is final and conclusive.

The acts of May 22, 1917, and July 1, 1918, provided that no Reserve or temporary officers would be eligible for retirement other than for physical disability incurred in line of duty. This remained the only statutory authority for the retirement of non-Regular officers until the act of June 4, 1920, when it was affirmatively provided that all Reserve and temporary officers who theretofore or thereafter incurred physical disability in line of duty would be eligible for retirement under the same conditions as was provided by law for officers of the Regular Navy who incurred physical disability in line of duty. This was further amended by the act of July 12, 1921, so as to require that all applications for such retirement be filed not later than October 1, 1921. The effect of these laws was to establish the right of the officers concerned to the same retirement pay, status, and benefits authorized for officers of the Regular Navy. These laws were later supplemented by the act of May 24, 1928, the Tyson-Fitzgerald bill, previously referred to in the discussion of the legislative history of Army retirement proceedings.

The Naval Reserve Act of 1925 provided that all commissioned and enlisted personnel of the Naval Reserve who were physically injured while on active duty, training duty, or travel to and from such duty, became entitled to benefits provided for the civilian employees of the United States. This principle was carried forward in the Revised Naval Reserve Act of 1938, and was extended to drills or other equivalent training duty.

Subsequent to the national emergency declaration in 1939, the act of August 27, 1940, as amended, provided that, effective on September 8, 1939, all personnel of the Naval and Marine Corps Reserve ordered into active duty by the Federal Government for extended military or naval service in excess of 30 days, who suffered disability or death in line of duty, would be accorded substantially the same benefits extended to Army personnel in the act of April 3, 1939. The Executive orders issued by the President in 1939 and 1940, which vested jurisdiction over physically disabled non-Regular officer personnel of the Army in the Veterans' Administration, were not applicable to Navy and Marine personnel. As a result, retired officer personnel of the Regular Army are placed on the retired list of the Army and paid from Army appropriations. Physically retired non-Regular officer personnel of the Army are certified to the Veterans' Administration, which agency administers the benefits accorded by law. The feature presents a principal difference between Army and Navy procedure in the matter. Reserve officers in the Navy and Marine Corps found to be permanently incapacitated for active service, as a result of an incident of the service, have been retired and placed upon the retired list in the same manner as legally required for disabled officers of the Regular Navy and Marine Corps. They have the status of retired officers, remain subject to recall to active duty, and are paid from Regular Navy and Marine Corps appropriations.

The Naval Reserve Act of 1938 provided that Reserve officers who became physically disqualified for active service could be transferred to the honorary retired list created by that act. While they did not receive any retired pay, such officers did occupy the status of retired officers. Thus to have transferred the disabled Reserve officers of World War II to the Veterans' Administration would have denied them the benefits of a retired status provided by the 1938 law. It will also be recalled that the laws of 1917, 1918, and 1920 did specify that the non-Regular officers of the Navy and Marine Corps, disabled in line of duty in World War I, would be eligible for retirement under the same conditions provided for Regulars. Thus it will be seen that, regardless of the considerations involved, the approach of the Navy has been to accord equal treatment to all physically retired officers, Regulars and non-Regulars, while the Army has endeavored to preserve retirement and the corollary benefits thereto to officers of the Regular Establishment.

Section III. Findings

Allegation

1. That inequities exist between the officer-retirement systems of the Army and the Navy."

(*a*) There can be no doubt that this allegation is true. By virtue of Public Law 305, Seventy-ninth Congress, Navy officers were authorized retirement in the highest grade satisfactorily held during the

war after 20 years of service, provided 10 years of such service were served in a commissioned status. At the close of hostilities, both the Army and the Navy had large groups of officers in the higher temporary-grade brackets, many of whom qualified for retirement under the provisions of Public Law 305. More than 600 Navy officers qualified and were retired in the highest grade satisfactorily held, but the same provisions were not applicable to Army officer personnel. With full justification, Army officers resented this inequity. It must be recognized that this inequity presented a motivation for Army officers to seek disability retirement which authorized retirement in the higher temporary grade, rather than be retired for reasons other than physical disability in a lower permanent grade. While physical retirement would achieve the desired equality in grade between Army and Navy officers, it would result in an additional inequity in favor of the Army officer, since his physical retirement pay would be tax-exempt while the nonphysical retirement pay of the Navy officer would not be exempt. Thus, the original inequity in favor of the Navy officer would, in effect, be reversed to favor the Army officer.

In the absence of an admission, it would be practically impossible to prove that any Army physical retirements were abetted by responsible military personnel in order to accomplish this result; however, hundreds of officers were affected, and they would have been less than human if they had ignored the possibility of financial gain which would inure to them for the remainder of their lives.

(*b*) An additional inequity has resulted from the enactment of Public Law 305.

Assume that an Army captain and a senior lieutenant of the Navy had been retired for physical disability prior to the war and were recalled to active duty during the war; that the Army captain subsequently attained the temporary grade of colonel and the Navy lieutenant the temporary grade of captain, and that neither of these officers suffered any additional disability by the date they were separated from active service and returned to the retired list. Under these circumstances, the temporary Army colonel would, in most cases, be returned to the Army retired list in the grade of captain, as pointed out in paragraph (*a*). Not only would the temporary Navy captain be returned to the retired list of the Navy in the grade of captain, but the increased increment of pay of a Navy captain as distinguished from that of a senior lieutenant would be merged with the original disability retirement pay and become totally tax-exempt, in spite of the fact that this increase in pay has no relation to the disability compensation he drew as a senior lieutenant. In addition to the resulting inequity between Army and Navy officers who come within this category, and such cases do exist, the intent of existing tax laws is thereby circumvented. The enactment of H. R. 2744 will not correct this defect; in fact it will compound it; however, the defect will be corrected if the recommendations of this committee relative to tax exemptions, contained in section IV, are adopted.

Allegation

2. "That disability retirement has been granted in some cases as a direct result of fraud."

An understanding of the disability-retirement procedures in the Army and Navy is necessary before this allegation can be intelligently considered.

70266—48—No. 261——2

Army procedure provides for the evaluation of an officer's physical condition by a medical disposition board composed of three medical officers. If the disposition board finds reasonable cause to believe that the officer is permanently incapacitated as a result of a disability incurred in line of duty, the officer is authorized to appear before an Army retiring board composed of three line officers and two medical officers. During the Army retiring board's consideration of the case, at least one and possibly more medical officers appear before the board to present their findings and recommendations as to the officer's physical condition. If the board finds that the officer is suffering from a disability which is permanent in nature, was incurred in line of duty, and is disqualifying for general military service, it recommends that the officer be retired for physical disability. The findings of the board are then transmitted to the Office of the Surgeon General where at least one medical officer, and perhaps more, review the findings of the retiring board. In practice, if the Surgeon General's Office concurs in the findings of the retiring board, the officer is retired. In completing this process, a minimum of eight medical officers have passed upon the physical condition of subject officer and, in most cases, have unanimously agreed in the findings.

Navy retirement procedure is substantially the same, except that it provides additional safeguards. After a medical-survey board of the Navy, which is the equivalent of a medical disposition board in the Army, has arrived at the conclusion that an officer should appear before a Navy retiring board, the case must be processed by additional agencies before being submitted to the retiring board. The transcript of the Medical-survey board is processed by the Bureau of Personnel, the Judge Advocate General's Department, the Bureau of Medicine and Surgery, the Secretary of the Navy's Advisory Board, and the Secretary of the Navy, the first five agencies including their recommendations by endorsement to the Secretary of the Navy. If the Secretary's Office approves, the case is then submitted to a Navy retiring board. If the Navy retiring board authorizes retirement, the case is again reviewed by the Secretary and transmitted to the President for final action. As in the Army procedure, a minimum of eight Navy doctors have considered every case before retirement is authorized.

It becomes immediately apparent that before a case of fraudulent retirement can be substantiated that the medical findings of some or all of the medical officers who evaluated the case must be proved to be fraudulent. The practical obstacles are so great that the chances of any such cases having been accomplished are extremely remote. The physical retirement of Maj. Gen. Bennett Meyers and the apparent ease with which other high-ranking Army and Navy officers have obtained physical retirement has prompted the general opinion that there are numerous cases of fraudulent retirement. While this committee cannot say that there have been no cases of fraudulent retirement, we can say that an impartial and diligent inquiry has thus far produced no evidence of fraud. In response to specific questions, during the course of our public hearings, the witnesses of the Department of the Army insist that there is no evidence of fraud in the Meyers case. In the absence of proof to the contrary, we must accept that conclusion. It is our opinion that the questionable cases which have been cited are the result of existing law, its interpretation and administration, and not the result of fraud.

Allegation

3. "That both the Army and the Navy have been overly generous in granting disability retirement, with a resulting increased burden on the taxpayers."

Departmental witnesses who have appeared before the committee point out, in summarizing the testimony presented during the course of our public hearings, that no specific case was cited of a single officer, Regular or non-Regular, retired or receiving retirement pay, who did not have a disability unfitting him for military service under the law and regulations prepared to carry out those laws. The validity of this general statement cannot be disputed; however, the statement ingnores certain definite conclusions which must be drawn from the statistics which were submitted to the committee by the Department of the Army and the Department of the Navy.

The comparative situation between Regular and non-Regular officers of the Army is presented in statistics which show that the average age of a Regular officer retired for physical disability was 53 years, and the average length of his service was 28 years. The average age of the non-Regular officer receiving retirement pay was 35 years, and his average length of active service was 2½ years. (Similar results are obtained from statistical summaries covering physical disability retirements of Regular and non-Regular officers of the Navy and Marine Corps.) Approximately 89 percent of the Regular officers who were retired for physical disability during the period 1940–47 held the grade of colonel or above, while less than 4 percent of the non-Regular officers held a comparable grade. The chief reason for this variation lies in the fact that most of the high-ranking Regulars had served in both World War I and World War II while most of the non-Regular officers were young men whose first active duty was during World War II.

The statistics which have been available to this committee conclusively show that most physical retirements result from diseases of deterioration, which diseases are admittedly more prevalent among older men. The cases which appear questionable to this committee are those involving the older officers who have served in a general-duty status for 30 years or more, or have reached the statutory retirement age.

There can be no doubt that many of the older officers have suffered incapacitating disabilities late in their careers. We offer no criticism of physical retirement in such cases; however, when an officer has served in a full-duty status for a period of 30 years, or until he has reached the statutory age for retirement, has completed such service in a full-duty status and is then retired for physical disability, we cannot escape the conclusion that such retirement is improper. Navy witnesses have cited the case of a vice admiral who was denied physical retirement, even though he had suffered retirable disabilities in 1938. In spite of those disabilities this officer resisted physical retirement at that time, and by perseverance and good luck he was able to overcome his disability to such an extent that he was able to serve throughout the war. In addition to the injuries he suffered in 1938, this officer was also suffering from certain diseases of deterioration at the time he was retired after the war, and because these conditions were not of a life-shortening nature, he was not given physical retirement.

No doubt the Army can cite identical cases involving Army officers. Such action in even a limited number of cases constitutes an admission that physical-disability retirement under such circumstances, although authorized by existing law, is morally questionable. No inference is made that such cases were fraudulent or illegal in any respect, but it cannot be denied that many officers who had completed their service careers sought physical retirement in order to obtain the total tax exemption which is accorded disability-retirement pay. The Surgeon General of the Army frankly admits that efforts to obtain physical-disability retirement, in preference to other methods of retirement, have increased since the ruling by the Bureau of Internal Revenue (1943) that disability-retirement pay was considered to be a pension and, therefore, was tax-exempt. Our public hearings produced testimony which stated that Regular Army officers "padded the record and did all sorts of things," in order to be physically retired. This was concluded to mean that Regular officers who had completed their service careers and were eligible for retirement would include every possible minor physical defect in their records which, accumulatively, would be sufficient to authorize physical-disability retirement. The same motivation, tax exemption, exists for naval officers in the same category, and an equivalent number of physical retirements have been granted under the same circumstances.

To the extent herein indicated, it is our finding that the services have been generous in granting physical-disability retirement. So long as the present tax motivation exists, it is not anticipated, nor can it be expected that current procedure in this respect will be altered; therefore, it is incumbent upon the Congress to remove the motivation. Our recommendations in this respect are contained in section IV.

Allegation

4. "That there has been an unlawful and calculated effort on the part of officers of the Regular Army to obtain disability-retirement benefits."

On the basis of statistics, the great majority of officers of general or flag rank, who were physically retired, had completed 30 years of active service or had reached the statutory retirement age. Consequently, regardless of the manner in which these officers were retired, they were assured of retirement in some form. Two motivations existed which would prompt a desire to be physically retired rather than for age or length of service. Physical retirement authorized retirement in the highest temporary grade held, in addition to the total tax exemption of retirement pay, whereas the other types of retirement might result in the officer being reduced to a lower permanent grade and the pay would not be tax-exempt. In any event, these officers were assured retirement under one of the alternative methods, and regardless of the method they would have received the same retired pay as though they had been retired for physical disability.

The non-Regular officer, whose average retirement age was 35, as contrasted to the average age of 53 for the Regulars, had much more to gain through physical retirement than the Regular. In addition to the total tax exemption, the average non-Regular officer who was granted disability retirement in the grade of captain or senior lieutenant would draw approximately $50,000 in retirement pay from the Government if he lived an additional 20 years.

Existing law specifically authorizes compensation on the basis of 75 percent of the base and longevity pay of the grade in which retired, and it is not our intention to criticize those who have legitimately become the beneficiaries of the law. The sole object in enumerating the comparative emoluments to be gained through physical-disability retirement is to conclusively show that a stronger motivation exists for the non-Regular than the Regular in seeking disability retirement. The non-Regular officer facing a separation from service undoubtedly realized that there were no alternative methods by which he could be retired, and that he would either draw a large sum of money as a result of being physically retired or, if not so retired, would be separated from service without compensation.

Allegation

5. "That a definite pattern of discrimination has been practiced by officers of the Regular Establishment against non-Regular officers, not only from the standpoint of the comparative manner in which disability retirement was granted but also on the basis of corollary benefits which Regular officers receive and which non-Regular officers of the Army do not receive."

(*a*) While we do not feel that non-Regular officers have been discriminated against in the degree charged, we do find that an element of discrimination does exist and should be corrected. We base our findings, in part, on the administrative procedures which were followed, particularly in the Surgeon General's Office of the Army, in the review of retiring board proceedings.

Before an officer's case was presented to an Army Retiring Board, two separate procedures were followed, one for the Regular officer and another for the non-Regular officer. After the Regular officer had been processed by the medical disposition board, the case was reviewed in the Surgeon General's Office before being presented to an Army retiring board. The non-Regular officer's case, after having been approved by the medical disposition board, was forwarded directly to an Army retiring board. Army witnesses insist that the only reason for this difference in procedure was that the Regular officer was a career man and that he should not be accorded the right to appear before an Army retiring board unless the Surgeon General was satisfied that he had a retirable disability. The theory is both reasonable and commendable, however, the results are not as commendable as the theory. The committee received direct testimony on this subject from a former officer who served as a member of an Army retiring board for almost 1 year, and whose qualifications and integrity are unquestioned. This officer testified that it was the general feeling among the personnel of the Army retiring board that the recommendation of the Surgeon General, with reference to a Regular officer's retirement, was considered as being tantamount to an order. In the Regular's case, the Surgeon General recommended retirement before the case ever reached the retiring board. In the non-Regular officer's case, the opinion of the Surgeon General was not expressed until after the Retiring Board reached its findings and recommendations, which were then subject to the disapproval of the Surgeon General's Office.

It was inevitable that a feeling of suspicion and dissatisfaction would arise from the different methods in which Regulars and non-

Regulars were processed. It is our finding that the procedure should be standardized and all officers, Regular or non-Regular, be processed in exactly the same manner.

(*b*) The administrative procedures followed by the Surgeon General's Office, after a case had been processed by an Army retiring board, prompts us to conclude that discrimination was practiced against the non-Regular officer.

The statistics which the committee has obtained from its questionnaires show that 30 percent of the non-Regulars as against 10 percent of the Regulars appeared before two or more Army retiring boards before being retired or certified to the Veterans' Administration for retirement pay. Undoubtedly, some of the discrepancies in the comparative percentages are due to the fact that the Surgeon General reviewed disposition board proceedings of the Regular before the Regular's case was submitted to an Army retiring board; however, we cannot believe that this variation in administrative procedure is the sole cause for the variation in percentages.

It is recognized that medicine is not an exact science, and that the physical standards prescribed by the Surgeon General's Office were not uniformly interpreted or applied by the 99 Army retiring boards which were in operation during the peak load of physical-retirement cases. In view of the fact that ranking medical officers failed to agree on the interpretation of the physical standards, retiring boards can hardly be charged with incompetence in applying them. Granting the propriety of an initial disapproval by the Surgeon General in order to effect uniform standards, we cannot agree that the continuing disapproval of the Surgeon General of the same case for as many as four or five times is appropriate. Our only witness with previous retiring board experience stated that the repeated disapproval of an Army retiring board's recommendation for retirement was ultimately construed to be an order to deny retirement. The end result was that one or two medical officers in the Surgeon General's Office were permitted to overrule and nullify the findings of at least seven other medical officers who had either examined the subject officer or had personal knowledge of his case. Numerous cases have been presented to the committee which involve repeated disapprovals of the medical findings of an Army retiring board by the Surgeon General's Office.

At the close of hostilities, both the Army and the Navy were confronted with the enormous task of evaluating the physical condition of many thousands of officers. The 99 Army retiring boards processed more than 80,000 individual cases. A far greater number were denied Army retiring board consideration after being processed by medical disposition boards. Departmental witnesses stressed the fact that they were not faced with the necessity of making an immediate determination as to the permanency of questionable disabilities of the Regular officers, but that such determination had to be made for all non-Regular officers who were being separated from the service. In processing such large numbers of cases, it was inevitable that some mistakes did occur, and both the Army and the Navy admit that many mistakes did occur. The best evidence that mistakes were committed lies in the fact that approximately 90 non-Regular Navy officers and 684 non-Regular Army officers have been physically retired by the review boards under section 302 of the Servicemen's Readjustment Act of 1944. None of these officers would now be

drawing disability retirement benefits if their sole means of relief had been confined to Army and Navy retiring procedures. We cannot feel that all of these cases were purely mistakes in judgment.

In fairness to the Department of the Army, we wish to point out that many former non-Regular officers who had been separated from service were recalled to active duty and immediately placed in a patient status on full duty pay while further attempts were made to evaluate the officers' physical condition. This practice has been followed since August of 1946, however, by virtue of a ruling of the Comptroller General, it must cease on April 30, 1948. We also wish to point out that the Navy took similar action more than 2 years ago when it established the Secretary of the Navy's Retirement Advisory Board. By this means, any officer on active or inactive duty, and regardless of the cause of his separation, can receive a full hearing if he believes he is entitled to a disability retirement. Non-Regular officers of both the Army and the Navy were the beneficiaries of this action, and both the Army and Navy Departments are to be commended for it.

(*c*) Army and Navy witnesses have testified that most of the medical officers were non-Regulars, rather than Regulars, and that there is neither proof nor reason to assume that they discriminated against other non-Regular officers. It is true that most medical officers were non-Regulars, but it is equally true that they were the subordinates of Regular officers who determined policy, standards, and procedure. Nothing more than an inference can be drawn from this fact, but it assumes greater validity when coupled with other factors.

The Army strongly opposed the enactment of the act of April 3, 1939, which gave non-Regular Army officers the same physical retirement benefits as those already authorized for Regular officers. (The act of August 27, 1940, created the same provisions for the Navy.) In view of the fact that the act discriminated against enlisted men, disregarded length of service and degree of disability in the computation of benefits, and created the medically impossible responsibility of making a speedy determination of every non-Regular officer's disability, Army opposition to the legislation is understandable. In addition to the difficulties which the act created, a rather widespread resentment arose among Regular officers. We cannot determine the extent of this feeling or the degree to which it may have affected non-Regular officers. However, we are convinced of its existence.

Some pertinent evidence on this point was obtained from records of the Army Air Forces. On November 19, 1945, AAF letter 25–77, which established a new AAF policy on certain medical matters, was directed at various echelons of command in the Army Air Forces. Shortly thereafter a conference was held in the Air Surgeon's office "to indoctrinate the chiefs of the several services and members of the disposition board into the new medical policy." The complete report of that conference was introduced into evidence and is included in the printed hearings of our investigation. Its authenticity is admitted. The report stated, in part:

> Current War Department policy concerning physical reclassification is based on a career basis rather than a strict adherence to qualification for military duty. By career we men simply this—that members of the Regular Establishment will

be qualified or disqualified for active service according to the physical standards required for further military duty. On the other hand, officers of the civilian components of the Army will be considered on the basis of whether or not they have any physical defects which would interfere with civilian status.

We have no proof that any non-Regular officers were denied physical retirement as a result of this new statement of policy, but the report established a policy which was clearly in violation of existing law. We completely reject the explanation of Army witnesses who attempted to justify the action. Was this document indicative of prejudicial thinking by the policymakers of the Army? Does it prove that Regulars attempted to circumvent the law because of their resentment of non-Regulars? Frankly, we do not know whether the action was the result of inadvertence or prejudice, but it was so improper that we take this opportunity to condemn it.

(*d*) The final point which is considered pertinent to the question of discrimination concerns hospitalization, PX, and commissary benefits.

At the present time all retired naval officers, both regular and non-Regular, are accorded these privileges. As to Army officer personnel, only the retired Regular officers receive them. It was inevitable that the non-Regular officer of the Army who had been retired for physical disability should seek equality with the non-Regular officer of the Navy.

The beginning of this problem can be traced to the enactment of the act of April 3, 1939, and the subsequent Executive orders which transferred non-Regular Army officers to the Veterans' Administration for the administration of retirement benefits, but failed to transfer non-Regular officers of the Navy in the same manner. Since a retired non-Regular Navy officer is transferred to the retired list of the Navy, is paid from naval appropriations and receives the same benefits as the Regular Navy officer, it is understandable that the feeling should arise among the disabled non-Regular officers of the Army that they were being discriminated against by the Regulars. Our recommendations, in this respect, relative to naval personnel are contained in section IV. On April 28, 1939, less than a month after the passage of the act of April 3, 1939, Executive Order No. 8099 vested all "duties, powers, and functions incident to the administration and payment of the benefits provided by the statute (act of April 3, 1939) in the Veterans' Administration." The act of September 26, 1941, extended exactly the same benefits as those provided in the act of April 3, 1939, to Reserve officers who were ordered to active duty for periods in excess of 30 days on or after February 28, 1925, except for service with the Civilian Conservation Corps. The act further provided that the functions "incident to the administration and payment of the benefits so provided are vested in the Veterans' Administration." The language of the various acts has repeatedly distinguished between Regular personnel and non-Regular personnel, Regular personnel being designated as "retired" while non-Regular personnel are referred to as receiving "retirement pay."

Witnesses who have requested that the non-Regular officer be accorded the same benefits as the Regular officer, and that the Regular Army Establishment administer these benefits, have stressed the point that they do not expect the Army to add any additional facilities or personnel in order to extend hospital benefits to the non-Regulars and their dependents, nor do they expect that post exchange and

commissary privileges will be extended to non-Regulars except on an inventory available basis.

If it is proper to extend these benefits to the non-Regular officer personnel of the Army, it is equally proper that they be extended to the disabled enlisted men who are drawing disability compensation from the Veterans' Administration. The most recently available figures show a total of 22,736 officers and warrant officers on the retired lists of the Army and Navy. All personnel in this group receive equal hospitalization, post exchange, and commissary privileges. Approximately 26,400 non-Regular Army officers of World War II are receiving retirement pay from Veterans' Administration and, in addition, more than 1½ million enlisted men are receiving disability compensation from the Veterans' Administration. So far as the disabled non-Regular Army officers are concerned, we are convinced that the law does not place the burden on the Regular Army Establishment of extending the benefits to those persons.

It is inconceivable that any benefit, other than psychological, would accrue to the more than 1½ million persons in question. We are of the opinion that an extension of the benefits in the manner requested would be an idle gesture, since it is evident that no benefits would accrue to the affected persons without a corresponding increase in existing facilities. We consider it to be the duty of the Congress to prevent rather than create competition between service facilities and private business.

There is no doubt that an inequity exists between the physically disabled non-Regular officers of the Army and the Navy, however, it is an entirely different matter to term this inequity a discrimination which is being practiced by the Regular Army against non-Regular Army officers. We conclude that the Army has properly interpreted and executed existing law so far as the extension of corollary retirement benefits is concerned. As previously pointed out, the act of April 3, 1939, was silent as to who should administer the benefits of the act, but the subsequent Executive order on April 28, 1939, clearly placed this duty upon the Veterans' Administration. The Act of August 27, 1940, which extended the same benefits to non-Regulars of the Navy, was likewise silent as to who should administer the benefits, and no Executive order was issued relieving the Navy of the administrative responsibility. Therefore, we find no basis which would justify a criticism of the Navy interpretation which placed this responsibility upon the Navy rather than the Veterans' Administration.

Allegation

6. "That physical retirement in a terminal leave promotion grade was improper."

Since terminal-leave promotions have been discontinued, this matter presents no problem for future consideration. Therefore, our consideraton of the subject is confined to the propriety of granting terminal-leave promotions in the first instance.

After the close of hostilities, it was recognized that many Army officers, particularly non-Regular Army officers, had served on active duty for extended periods of time without a promotion. It was also recognized that many of these officers had efficiency ratings of excellent or above, and that this period of excellent performance was

deserving of recognition. Pursuant to the requests of numerous organizations, and to his own desire to recognize the meritorious service of non-Regular officers, General Marshall, then Chief of Staff, authorized the creation of terminal-leave promotions. In October of 1945, a War Department directive was issued which authorized the promotion to the next higher grade of those officers who had served for a specified period of time without a promotion and with an efficiency index of excellent or above. Those non-Regular Army officers who came within this category were promoted to the next higher grade when they entered a terminal-leave status. The terminal-leave period varied according to the amount of accumulated leave in each individual case; however, in each case the officer drew the full pay and allowances of the terminal-leave promotion grade until the expiration of the terminal-leave period. While the primary object of this directive was to accord recognition for the meritorious services of non-Regular officers, the Regular officers who were being separated from service were not long in asserting their claims for terminal-leave promotions. The program had progressed to such an extent that it was not considered advisable to withhraw terminal-leave promotions and, in order to attain equality, terminal-leave promotions were extended to the Regular officers under the same conditions as they had previously been extended to the non-Regulars.

It is apparent that no responsible agency in the War Department had considered the effect of this directive on the status of an AUS officer who received a terminal-leave promotion and was subsequently found to be physically disabled. It was inevitable that such cases would arise and that a legal determination would have to be made as to whether the retired or retirement pay of the officer would be based upon his terminal-leave promotion grade or on the grade in which he last served on active duty. When this question was submitted to the Judge Advocate General of the Army, it was held that an AUS officer had only one grade, which was the last grade to which he had been promoted. Since this included the terminal-leave promotion grade, it was ruled that an officer who was physically retired while serving in a terminal-leave promotion grade should have his retired or retirement pay computed on the basis of his terminal-leave grade. As a result, the retirement pay of many officers is based on the base pay of a grade in which they served no active duty.

It has been determined from committee questionnaires that 69 Regular officers and 236 non-Regular officers, all in the grade of colonel or above, who are drawing retired or retirement pay, have attained their present grade as a result of a terminal-leave promotion. It is certain that a far larger number of terminal-leave promotions occurred in the grades below that of colonel.

Many of these officers might have been promoted had they been subject to the same group-promotion system which governs Navy promotions, but this theory is so conjectural that the committee has no basis upon which to predicate a logical finding. It cannot be denied that there was legal justification for the opinion of the Judge Advocate General's Department which approved this procedure; however, we feel that there was an equal legal justification for ruling that physical retirement in a terminal leave promotion grade was not authorized, and we are certain that such a ruling would have been in conformity with the intent of General Marshall's original directive.

The imponderables which are presented by this situation prevent us from finding that the increment of terminal-leave pay should now be withdrawn from retired or retirement pay; however, we would be remiss if we failed to point out our disagreement with the legal interpretation of the directive which has permitted this situation to arise.

Section IV. Recommendations

1. Proposed amendments to the Servicemen's Readjustment Act of 1944, as amended (Public Law 346, 78th Cong.)

(*a*) Section 302 of the above-stated act directed the Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury to establish—

boards, of review composed of five commissioned officers, two of whom must be from the Medical Corps of the Army or Navy, or from the Public Health Service, as the case may be.

It is—

the duty of any such board to review, at the request of any officer retired or released to inactive service, without pay, for physical disability, pursuant to the decision of a retiring board, the findings and decision of such retiring board.

Pursuant to the act the boards were established, but were limited to one for each of the departments and all were located in Washington, D. C. This limitation on the number and location of the boards resulted in both physical and financial hardships to many disabled officers who elected to appear in person before the review board. In spite of these hardships, by March 1, 1948, approximately 90 Navy officers and 684 Army officers, who had been denied physical retirement through prescribed Army or Navy procedure, were authorized such retirement by the review boards.

Witnesses have paid tribute to the fairness with which the review boards have functioned, but have been most critical of the jurisdictional restrictions which the act imposes. Unless an officer is separated from service with a disability but without compensation, he is denied an appeal to the review board. This has resulted in the denial of an appeal to many officers who were denied retirement in spite of a disability.

Therefore, we recommend that section 302 of the Servicemen's Readjustment Act of 1944, as amended, be further amended to provide:

(1) That it shall be the duty of any such board to review, at the request of any officer or former officer separated from active service, whose physical condition has been considered by a retiring board or a board of medical survey, the findings, recommendations, and decisions of such retiring board or board of survey, or such other cases as may be referred to such board by the head of the department concerned: *Provided*, That such board shall not review the case of any person who was separated from the service under other than honorable conditions.

(*b*) The procedure followed by the review board of the Navy under section 302 has been criticized. In our opinion, the criticism is well-founded.

Under the initial retirement proceedings of the Navy, an officer's physical condition is first evaluated by a board of medical survey. The case is then processed by the Bureau of Personnel, the Judge Advocate General of the Navy, the Bureau of Medicine and Surgery, the Secretary's Advisory Board and the Secretary of the Navy, before

reaching a Navy retiring board. If an officer is denied retirement after this thorough screening, it is more than likely that one or more of the agencies which intervened in the case after it left the Medical survey board and before it reached the Navy retiring board had expressed an adverse opinion on the case. While it may be entirely proper that each of these departments be permitted to express an opinion during the initial proceedings as to the advisability of retiring an officer, we see no merit in permitting the same agencies to intervene in the retirement proceedings being conducted by the board of review under section 302. Under existing administrative procedure in the Navy, the same agencies which participated in some degree in the denial of retirement in the first instance are permitted to express their opinion on the same case on review. Such procedure violates, in spirit at least, the very reason for the creation of disability review boards and constitutes an improper intrusion upon the rights of an officer who seeks relief from the disability review board.

Under Army procedure, an officer who desires to appeal his case to the Secretary of the Army's Disability Review Board files his application with the Adjutant General. The application is processed in that office, in order to determine whether or not the case meets the jurisdictional requirements necessary to confer jurisdiction upon the Review Board. All cases which meet these requirements are then transferred to the Secretary's Review Board, which proceeds to hear the cases in proper order without the intrusion of a single agency which had participated in the initial denial of retirement. We hold that the Army procedure is the more desirable.

Therefore, we recommend that current administrative procedure in the Navy Department, in the furtherance of section 302 of the Servicemen's Readjustment Act, be altered in such manner as to conform to the procedure followed by the Department of the Army.

2. Authority of the Surgeons General—Army and Navy

The evidence is conclusive that the Surgeons General have repeatedly disagreed with the medical findings of retiring boards, as many as four or five times in some cases. The physical standards prescribed for physical retirement were not uniformly interpreted, nor applied, by the 99 Army retiring boards, nor by the 4 naval retiring boards which were in operation during the peak load of physical retirement cases. The task which confronted the Surgeons General and the retiring boards in this respect is admitted to have been extremely difficult. With due allowance for this fact, we consider that the administration of these standards left much to be desired. The Surgeons General approved some cases for retirement and denied others which involved exactly the same type of disability. This was not a failure of the law; it was an administrative failure.

It is conceded that the Surgeons General should be accorded the power of review to insure standardization and to disapprove the original medical findings of a retiring board. It is further conceded that the Surgeons General should be accorded a second review, if necessary, in order to express a continuing disapproval of the medical findings of the retiring board. In our opinion, additional disapproval of the medical findings by the Surgeons General should not be permitted. Since the Surgeon General of the Navy is already limited to one endorsement on a retiring board case, the following recommendation is not applicable to current Navy procedure.

We recommend that, if the Surgeons General shall twice disapprove the medical findings of a retiring board on the same case, the case shall then be certified to the Secretary of the Army, or Air, as the case may be, whose decision on the matter shall be final.

3. Hospital benefits, post exchange and commissary privileges

The extension of hospital benefits and post exchange, ship's store, and commissary privileges to non-Regular officers, warrant officers, and enlisted men of the Army, Navy, and Marine Corps presented no problems prior to 1939. The act of April 3, 1939, provided in pertinent part:

> That all officers, warrant officers, and enlisted men of the Army of the United States, other than officers and enlisted men of the Regular Army, if called or ordered into active military service by the Federal Government for extended military service in excess of 30 days, other than for service with the Civilian Conservation Corps, and who suffer disability or death in line of duty from disease or injury while so employed shall be deemed to have been in the active military service during such period and shall be in all respects entitled to receive the same pensions, compensation, retirement pay, and hospital benefits as are now or may hereafter be provided by law or regulation for officers and enlisted men of corresponding grades and length of service of the Regular Army, including for their dependents the benefits of the Act of December 17, 1919 (41 Stat. 367), as amended.

Since there were no provisions of law at that time which authorized the physical retirement of enlisted men of the Regular Army, the provisions of the above-quoted act extended no benefits to non-Regular enlisted men of the Army. However, non-Regular officers and warrant officers of the Army receive very substantial benefits under the act, and they construed the language of the act to include equal post exchange and commissary privileges, even though those privileges were not specifically enumerated. Both the Army and the President foresaw the creation of serious problems for the Army if the Army were forced to assume the administration of the benefits of the act. As a result, Executive Order No. 8099 was issued on April 28, 1939, and, as amended, provides in pertinent part:

> Whereas the act is silent as to what agency shall administer the benefits provided thereby; and
>
> Whereas it is deemed appropriate and desirable that such administration be placed in the Veterans' Administration:
>
> Now, therefore, by virtue of the authority vested in me as President of the United States, and by the act of July 3, 1930 (ch. 863, 46 Stat. 1016), the duties, powers, and functions incident to the administration and payment of the benefits provided by the statute as above set out are hereby vested in the Veterans' Administration: *Provided*, That in the administration of the retirement-pay provisions of the said statute, the determination of all questions of eligibility for the benefits thereof, including all questions of law and fact relating to such eligibility, shall be made by the Secretary of War, or by someone designated by him in the War Department, in the manner, and in accordance with the standards, provided by law, or regulations for Regular Army personnel.

Thus the act of April 3, 1939, created equal physical retirement benefits for Regular and non-Regular Army officers, but subsequent Executive orders relieved the Army of the responsibility of administering the benefits to non-Regular officers and warrant officers and placed that responsibility upon the Veterans' Administration.

On August 27, 1940, a similar enactment extended the same benefits to all officers, nurses, warrant officers, and enlisted men of the United States Naval Reserve or United States Marine Corps Reserve. A reading of the two acts discloses that the language is identical in all material respects. In spite of this fact, no Executive order was issued transferring the responsibility for administering the benefits of the act from the Navy to the Veterans' Administration. On the con-

trary, the Judge Advocate General of the Navy ruled that the non-Regular naval personnel referred to in the act were authorized to receive not only the same hospital benefits, but the same commissary and ship's store privileges which were already enjoyed by Regular Navy personnel.

We fail to understand the completely divergent interpretation of two laws which are identical in language. Perhaps it is true that the number of retired personnel on the retired list of the Navy in 1940 was so small that it was possible for the Navy to administer the benefits with little additional effort. However, the intervention of a war has completely altered this situation. As of today there are approximately 23,000 officers, warrant officers, and enlisted men on the retired lists of the Army and Navy. Approximately 13,000 of this number are on the retired list of the Navy. The Navy cannot justify the extension of the privileges in question on the basis of the comparative numbers involved.

The Department of the Army and the Department of Air are presently operating 162 sales commissaries in the United States which are handling a total of 259,858 individual accounts. These accounts are limited to active duty and retired Regular personnel and a limited number of civilian employees. The Navy is operating 38 sales commissaries within the continental limits which handle a total of 109,598 individual accounts. These accounts represent not only active-duty personnel but retired Regulars and non-Regulars, both officers and enlisted men. We doubt that many of them know it, but under current Navy regulations all honorably discharged officers and the 1½ million enlisted men of the Army who are being cared for and are receiving medical treatment from the Veterans' Administration are authorized to receive services from Navy ship's service stores. Of course this service is extended on an inventory available basis, and it is inconceivable that any appreciable number benefit by the provisions.

We subscribe to the theory that hospitalization benefits, post exchange, ship's service store, and commissary privileges were originally created for the convenience of active-duty personnel who were not conveniently located to similar public facilities. These service facilities have been so greatly increased that they may now properly be termed "big business."

The decision of the Comptroller General, dated October 19, 1943, (23 Comp. Gen., pp. 284–286) stated:

> * * * retired pay together with any longevity increase therein is paid to retired officers of the Regular Army as current compensation or pay for their continued service as officers after retirement and only while they remain in service (*U. S.* v. *Tyler*, 105 U. S. 244), whereas the retirement pay authorized by section 5 of the act of April 3, 1939, for officers of the Army of the United States, other than officers of the Regular Army, who suffer disability while employed in the active military service of the Federal Government, is not conditioned on their remaining in the service but is more in the nature of a pension predicated on the disability without regard to whether they remain in the service and without relation to any such subsequent services * * * ."

While this decision refers to Army personnel only, we subscribe to the differentiation which is made between Regulars and non-Regulars, and are of the opinion that it should equally apply to naval personnel. We do not criticize the attitude of the navy in extending these privileges to non-Regulars. On the contrary, we commend the Navy in attempting to obtain equality of treatment for all Naval personnel.

However, we consider that the time has arrived to face the fact that ships' stores, post exchanges, and commissaries are engaged in business on a scale that was never anticipated. It is also a fact that hospital facilities and medical personnel of the Army and Navy are taxed to capacity.

Having concluded that the administration of the corollary benefits of retirement by the Army and Navy should be limited to career personnel of those respective services, we recommend that, by executive order or statute, if necessary, all non-Regular naval personnel who shall qualify for physical retirement be certified to the Veterans' Administration for the administration of the benefits which are now or may hereafter be provided by law or regulation.

4. Tax exemption

The total tax exemption now accorded disability retirement pay presents a motivation for an officer to seek physical retirement in preference to retirement for age or length of service. We consider any system of military retirement which places a premium on the retirement of a Regular officer before he has completed his military career, as prescribed by statute, to be basically wrong.

Prior to the interpretation of the Internal Revenue Act of 1942, which interpretation exempted retired or retirement pay from income tax, Regular officers resisted retirement and made every effort to complete their service careers. Since no tax exemption existed prior to 1943, no officer who entered service before that time relied upon the tax exemption as a reason for choosing a military career, and we doubt that more than a negligible number of non-regular officers were even aware of the tax-exemption ruling until their hospitalization prior to physical retirement. We must conclude that tax-exemption of physical retirement pay was not an incentive for entrance into military service. In our opinion, the exemption constitutes an improper departure from the fundamental principles of our system of taxation.

In the past one group of physically disabled officers has been extended special consideration. That group consists of those officers who have become disabled as a result of wounds suffered in combat with an enemy of the United States or as a result of the explosion of an instrumentality of war. This committee has not explored this question sufficiently to enable it to make any positive recommendations, however, we do recognize that the appropriate Congressional committees and the Congress should give full consideration to this matter.

Therefore, we recommend that the present tax exemption of disability retirement pay of Regular and non-Regular officers of the Military Establishment, with the possible exception above noted, be removed.

5. Reexamination of officers who have been physically retired or approved for retirement pay

Public criticism of physical retirements has become so intense that a serious reflection has been cast upon the integrity of the military services. There have been specific charges of fraud, inequities and discrimination and a general charge that disability retirements in the armed forces constituted a racket. We have considered each of these charges in this report, and have pointed out that there is no method under existing law which permits us to prove or disprove the existence of fraudulent retirement cases. In view of the serious

charges which have been made, we consider it imperative that affirmative action be taken in order to make a positive determination of the facts. There appears to be only one possible course and that is a re-examination of those who have been physically retired or authorized retirement pay. A reexamination of every person in this category would entail a needless waste of time and money. The great majority of physical retirement cases are obviously permanently disabling. In addition, there are many whose disabilities were incurred in combat, and we oppose any alteration in their retired or retirement status.

It is also recognized that the great majority of physical retirements were granted after 1943, and that the tax exemption which we have criticized was authorized in 1943.

Therefore, we recommend:

(*a*) That all Regular and non-Regular military personnel who were physically retired or granted disability retirement from January 1, 1944, to January 1, 1948, be examined by the respective service of which they were a member.

(*b*) That all persons whose disability is obviously permanent in nature, or who have suffered their disability as a result of combat with an enemy of the United States, or through the explosion of an instrumentality of war, be exempted from such reexamination.

(*c*) That all retired Regular officers who shall have recovered from their disability, as determined by a reexamination, shall be returned to the active list in their last active-duty grade.

(*d*) That the retirement certification of all non-Regular officers who shall have recovered from their disability, as determined by a reexamination, be withdrawn.

(*e*) That all examinations contemplated under this recommendation be conducted by a panel or group which shall include equal numbers of both Regular and non-Regular medical personnel.

6. Suggested changes in existing military retirement law

At the close of hostilities it was necessary to demobilize approximately 1,000,000 non-Regular officers and warrant officers. Many of those officers were already in hospitals as a result of disabilities, and many others were placed in hospitals as a result of physical defects which were discovered during a physical examination at a separation center. Approximately 100,000 Army, Navy and Marine officers were in this category. Since these officers were returning to civilian life, it was necessary for the Retiring Boards and medical personnel to evaluate their physical conditions as quickly as circumstances would permit. If it could be determined that an officer was permanently incapacitated as a result of an injury incurred in line of duty, the officer was retired or certified to the Veterans Administration for retirement pay. Cases involving amputation, gunshot wounds and other similar disabilities presented no difficulty in this respect. They were obviously permanently disabling. Many other cases involving diseases of deterioration and other similar disabilities defied solution by the best medical authorities within any reasonable period of time. It is our opinion that the latter group of cases has been chiefly responsible for the numerous charges of discrimination between non-Regulars and Regulars and the public charge that military retirements constituted a racket.

The necessity for a speedy determination of the permanency of a Regular officer's disability presented no problem. If there was any question as to permanency, the Regular was further hospitalized, placed on a temporary limited duty status or returned to a full duty status. If not retired, he was always available for further evaluation of his physical condition. If he subsequently recovered, he was restored to a full duty status. If his questionable disability could subsequently be determined to be permanent in nature, he was retired.

No one has been able to explain to our satisfaction the meaning of the words "reasonable time." Some medical authorities state that 1 year is a reasonable time. Others specify different periods. In general, an attempt was made to make a determination of permanency within 1 year, but many cases have been hospitalized for periods as long as 3 years, after which it was still impossible to determine whether or not the disability was permanent in nature. Consider the case of an officer who has suffered a nerve injury with a resulting loss of 3 inches of a given nerve. Nerve specialists have said that the nerve will usually regenerate itself at the rate of 1 inch per year, but that there is always the chance that the regeneration may not occur or be complete. Should a retiring board or the Surgeon General of the Army or the Navy find that an officer suffering from this type of disability is permanently disabled, after he has been hospitalized for 1 year? Since the best medical authorities frankly state that they cannot make such a determination, it is an idle gesture for us to admit that we are unqualified to express an opinion. The act of April 3, 1939, resulted in this medically impossible requirement, and we consider it imperative that the requirement for determining permanency of a given disability within a limited period of time be removed.

We do not agree with those who conclude that active duty service creates a contractual relationship between the Government and an officer, which guarantees that existing law governing physical retirement will not be altered. The military retirement system is a noncontributory system and, in our opinion, confers no vested rights upon its prospective beneficiaries. We consider it within the authority of the Congress to alter existing retirement laws in any manner it deems advisable. However, aside from the purely legal aspects of the question, we cannot ignore the moral obligation which the Congress has accepted by the enactment of existing laws. Most physically disabled officers, particularly the younger non-Regulars, whose average age is 35, have acquired homes, increased their families and have incurred other substantial long-term obligations on the assumption that their retirement pay would not be interrupted. We recognize the moral obligation and, except for removing the present income tax exemption, would not disturb the retired or retirement pay of those who have been legitimately retired or granted retirement pay. This conclusion does not preclude a recognition of the fact that present retirement laws are inadequate in some respects. Two possible solutions are suggested: (1) A modification of existing law, or (2) the creation of a new retirement system which restricts retirement to career personnel and compensates disabilities of noncareer personnel on a percentage-of-disability basis.

(*a*) With reference to the first plan, we recommend that the Retirement Subcommittee of the House Armed Services Committee consider the following proposals:

(1) That fitness for military duty be considered as the criterion for determining eligibility for physical disability retirement.

(2) That compensation for physical retirement continue to be 75 percent of base and longevity pay.

(3) That there be no change in existing procedure in those cases involving a disability which is obviously permanently disabling.

(4) That those officers whose disability continues to be questionable as to degree or permanency after maximum hospitalization be conditionally retired for a maximum period of 5 years.

(5) That those officers conditionally retired be placed in one of several categories, according to the nature of their disability, which category shall determine the frequency of reexamination during the period of conditional retirement.

(6) That any officer who shall continue to be unfit for general military service at the expiration of the conditional retirement period be presumed to be permanently disabled and placed on the retired list or certified to the Veterans' Administration, as the case may be.

(7) That any Regular officer who shall recover from his disability within the prescribed period be returned to active duty in the same grade in which conditionally retired, but with a loss of longevity and seniority credit equal to the period of conditional retirement.

(8) That the conditional retirement of any non-Regular officer who shall recover from his disability within the prescribed period be terminated.

(9) That reexamination contemplated under this proposal be conducted by the medical personnel of the service of which the conditionally retired officer is a member.

(10) That no officer who has completed 30 years of active commissioned service or has attained the statutory retirement age, and has completed such service in a full duty status, be retired for physical disability.

The chief accomplishment of these modifications of existing law would be to insure that all physical disability retirements were legitimate.

Modification of existing law in accordance with paragraph (*a*) would not answer additional criticisms which have been made against the existing physical retirement system:

(1) It results in a serious discrimination against enlisted men.

(2) No provision is made for the reexamination of officers who have been retired or certified for retirement pay—once retired, always retired. As a consequence, those who may have recovered continue to draw full retirement benefits.

(3) The degree of disability has no relation to the amount of compensation. Therefore, an officer whose sole disability is a hearing deficiency draws the same amount of money as an officer, of the same grade and length of service, who has lost both legs.

(*b*) In view of these serious criticisms, we recommend that the Retirement Subcommittee of the House Armed Services Committee

give full consideration to the establishment of a career system of retirement which would—

(1) Establish, by statute, the number of years necessary to constitute a military career.

(2) Equalize the rights to physical disability retirement as between Army and Navy enlisted personnel.

(3) Authorize longevity credit to non-Regular officers and enlisted men for inactive duty service.

(4) Authorize retirement, physical or otherwise, for all officers and enlisted men whose length of service equaled or exceeded such statutory requirement.

(5) Direct that all other officers and enlisted men, Regulars and non-Regulars alike, who become incapacitated for general military service before completing sufficient service to meet the statutory requirements for retirement, be certified to the Veterans' Administration and compensated for percentage-of-disability, on such basis as the Congress may determine.

Our findings and recommendations do not preclude the existence of other deficiencies and abuses under existing law nor other possible solutions. Our primary responsibility has been to investigate, not legislate, but we would be derelict in the discharge of our responsibility if we were merely to enumerate the deficiencies and abuses which we have found without offering the possible solutions which have suggested themselves during our 4½ months study of the subject.

In the final analysis any proper system of military retirement must accomplish justice and equity for both the beneficiaries of the system and those who must underwrite its cost. We conclude that the present system does neither. Accordingly, we submit the foregoing report.

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